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ATTORNEY MAGOON ON TRIAL FOR MISCONDUCT

(Continued from page 1.)

making of the deed, it was delivered to Sumner and thereafter cancelled by Sumner and R. W. Davis.

He denies having filed the certain demurrer but admits he was responsible for it. He does not remember whether two of the twelve grounds of the demurrer were for misjoinder of parties defendant, but believes that it was then thought that the plaintiff, Bishop Roper as trustee, and John K. Sumner, the life tenant, were the only proper parties to the bill. Sumner was urging a speedy trial of the suit and respondent did not have the opportunity to make an exhaustive study of the law on the several grounds of demurrer as he would have liked, the time being mostly spent on the question of revocability of the trust upon which the case was ultimately decided in favor of Sumner.

REGARDS CHARGES PUERILE.

Mr. Magoon submits, without intention of being disrespectful to the Attorney-General, that the allegations in paragraph seven of the information "are trivial and puerile in the extreme." In this connection he denies he told Stewart that Willie Davis had no interest in the property. He goes on at great length to intimate that this view about Willie Davis came from Stewart to him. Then he argues that it made no difference, anyway, whether Willie Davis was a party or not. Davis would have been bound by the decision of the court, even if he had not consented to the cancellation of the deed.

He could not understand how the Attorney-General could have charged him with fraud upon the Circuit Court in the Davis trust deed matter, in view of the correspondence between the Attorney-General and himself relative to the investigation of the conduct of attorneys which he quotes, and of the report of the Attorney-General to the Supreme Court in which he said: "I find absolutely nothing in the actions of J. A. Magoon, Esquire, upon which charges could be based before your Honorable Court."

THE ADVERTISER BLAMED.

Respondent in this connection says: "That the attitude of the said Lorin Andrews at this time is entirely inconsistent with the statement in his report, and this deponent believes that this shifting of the attitude of the Attorney-General is due to a too sensitive regard for what might be taken as public opinion, as reflected in the columns of the Pacific Commercial Advertiser, which paper has relentlessly, maliciously and continuously traduced and maligned respondent."

He believes that the statement regarding the Willie Davis trust deed in the affidavit was intended to influence the Court improperly, as no mention had hitherto been made of the trust deed excepting an allusion in a brief of A. S. Humphreys, upon which respondent comments:

"It will be seen from the above that the only purpose for which even the critical eye of opposing counsel could use the matter of the trust deed to R. W. Davis, was an abortive attempt to throw discredit on the motives of respondent, R. W. Davis and John K. Sumner."

COLOSSAL SERVICES.

Thousands of words are used by respondent to recount the services for which he received the fee of \$4000 from Sumner. He says that when Sumner lost confidence in himself and Geo. A. Davis and suggested the calling in of Kinney, Ballou & McClanahan, the respondent cheerfully consented but W. A. Kinney declined the offer, in a letter quoted, unless he could have the control and direction of the case. Respondent was willing to agree, as he believed Humphreys and Thompson desired to make the suit one for the trial of personal differences between attorneys, but Geo. A. Davis would not consent and the firm named therefore did not come in.

CLAIMS FEE REASONABLE.

Mr. Magoon says his fee depended almost, if not wholly, upon the successful issue of the suit. If Sumner had failed, respondent believes that not only would he have recovered no remuneration for all the services rendered and time spent, but would not have received back the costs paid in the suit and the amounts he actually advanced for the support of J. K. Sumner for a long time, if ever.

He says the property of J. K. Sumner involved in the trust was \$48,025 in cash and real estate of the value of from \$10,000 to \$20,000, making in all an estate in the neighborhood of \$70,000. Said suit being entirely successful, the said estate is now subject to the absolute control of Sumner, and respondent claims he might have charged \$4000 for the services performed by himself and associates in that suit, entirely separate and apart from any fee Sumner might be pleased to pay Geo. A. Davis.

DEFENDS MRS. DAVIS.

Mr. Magoon proceeds at great length to recount good offices done by him for Sumner, mentioning his defense of the Ah In case and defeat of the injunction on the \$48,025 withdrawal. He defends Mrs. Maria Davis from the charge of blackmail, and says the fee she paid Geo. A. Davis was her own money, and Davis paid him half in accordance with agreement. Neither she nor her son, R. W. Davis, nor John K. Sumner, though he has met them many times since, has ever suggested any dissatisfaction in that matter.

THANKFUL FOR OPPORTUNITY.

In conclusion Mr. Magoon thus expresses himself: "That so far from harboring any malice or ill-will against the Attorney-General for bringing this information, however unjust the charges appear to be, respondent is heartily thankful to him for thus affording respondent an opportunity to legitimately spread upon the records of this Honorable Court, as detailed a history of his connection

with the recent litigation of said J. K. Sumner as the time allowed for answer will permit. This respondent does, with a feeling of absolute security, that all the misrepresentations and falsehoods, so studiously circulated about him have been met, refuted and overthrown. "Respondent cheerfully submits this, his answer to the information herein of Lorin Andrews, the Attorney-General of the Territory of Hawaii, to a Court which he has always held in the highest esteem, and in whose presence he claims to have always conducted himself with the respect due to so high a tribunal, the high standing of which, for integrity and ability, so far as in him lies, as one of its honored and trusted officers, he will forever maintain."

TRIAL OF MAGOON UPON THE CHARGES

The Supreme Court resumed its sitting promptly at 1:30, Chief Justice W. F. Frear and Associate Justices C. A. Galbraith and Antonio Perry on the bench.

Lorin Andrews, Attorney-General, appeared for the Territory with the cooperation of W. S. Fleming, Assistant Attorney-General. J. Lightfoot appeared to assist the respondent, J. A. Magoon.

Attorney-General Andrews read the information against the respondent, of which the substance has already appeared in the Advertiser.

Mr. Lightfoot read the answer of respondent. Reading throughout with considerable deliberation of accent, he did not finish until five minutes of three o'clock.

DAVIS RULED OUT.

Geo. A. Davis here appeared and asked if his case could not be tried along with that of Mr. Magoon. The evidence would to a large extent be the same in both cases.

"What does the Attorney-General say?" Justice Perry asked.

Mr. Andrews stated that the charges were entirely distinct. Mr. Magoon was not charged with the same things as Mr. Davis, nor Mr. Davis with those against Mr. Magoon.

Chief Justice Frear announced that the Court regarded the matters as distinct.

EVIDENCE BEGINS.

The Attorney-General then proceeded to put in evidence, beginning with the records in various Sumner cases.

P. H. Burnette was the first witness. Was a notary public the latter part of October, 1902. Had his notarial record with him. It contained under Oct. 23 a power of attorney from John K. Sumner to J. Alfred Magoon; under date Oct. 31 a trust deed from John K. Sumner to R. W. Davis; it conveyed all Sumner's property in this Territory, including \$48,025 in bank; presumed it was drawn by Magoon or came from his office; Sumner and Davis came in with it, thought Magoon was with them. On Nov. 3 there was an addition to the same trust deed from Sumner to Davis. Jan. 26, 1903, there was a cancellation by Davis to Sumner of trust deed dated October 31, 1902.

No cross-examination.

A RELUCTANT WITNESS.

T. McCants Stewart said he was an attorney-at-law and knew J. A. Magoon. Witness was attorney for Bishop Gulistan F. Roper in suit to have a new trustee for John K. Sumner under trust deed of 1898. Omitted the name of Willie Davis from the list of defendants. Witness related his conversation with the Attorney-General over the telephone about why he omitted the name of Willie Davis, in which he had said he thought Mr. Peters, partner of Magoon, came to ask him to leave out the name of Davis. Witness spoke apologetically of appearing where the professional life of a brother attorney was concerned. His recollection was that Magoon as well as Peters spoke to him about leaving out Davis as a party defendant. No mention was made to me by Magoon of a trust deed by Sumner to R. W. Davis. Think it was first brought out by Mr. Humphreys in the Circuit Court; might have been brought out first in the Supreme Court. At the time I was indifferent as to the controversy between Sumner and his relatives, as I represented only the Bishop.

Cross-examination, witness made a voluntary statement that he had a recollection of visiting the Bishop, of being told by him that he had surrendered the \$48,025 to Sumner and of advising the Bishop that it was doubtful if he could get rid of the trust in that way. My endeavor was to get the Bishop rid of that trust. (To Magoon.) You stated to me that you positively could break down the petition by cross-examination of the Bishop.

TOO MUCH VOLUNTEERED.

The Attorney-General objected to evidence on cross-examination volunteered by witness in support of statements in respondent's answer.

Witness was allowed to say that he received a fee of \$500 for representing the Bishop, which Sumner admitted was reasonable and which was settled in Magoon's office.

It was admitted by Mr. Magoon that Judge De Bolt if called would testify that the existence of the trust deed to

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R. W. Davis was not mentioned in the trial before him.

THE CENTRAL FIGURE.

John K. Sumner was called but before he was questioned the respondent admitted a series of facts propounded by the Attorney-General. Mr. Sumner asked for an interpreter and Chas. L. Hopkins was called in. The morning after I got \$48,025 forget where I went, probably to Magoon's. Paid Magoon \$4,000; offered him \$2500 for his services, but Magoon told me he had done considerable services, and there was the case of Ah In pending, and he said he ought to receive more considering all the work yet to be done. Ah In case is not yet settled. At the time of the Roper suit was living with Maria (Mrs. Buffandeau), after that I left her place; Victoria advanced me \$2500; Magoon did not give me any money. I got a receipt from Magoon for the \$4000, have not the receipt with me. (Mr. Andrews requests him to bring it with him today.)

It was here admitted by respondent that witness paid Geo. A. Davis \$2500 as associate counsel in Roper vs. Sumner.

MAGOON'S LITTLE BILL.

Cross-examined—Money for my support came from Maria; she got \$10,000 from Davis (G. A.). Do not know that she used all that money up. Did not know that the money for my support came from you (Magoon) through Maria Davis. Yes, I paid you \$400 the other day; don't remember that Willie Davis told me it was money you advanced for my support; you had a bill against me. I am satisfied with the \$4000 I paid you; I told Mr. Andrews I was satisfied.

Justice Perry—Why did you offer Mr. Magoon \$2500?

Witness—That was the fee that I offered you (Magoon) first.

Justice Perry—Why didn't you offer him more?

MAGOON APPRAISES HIMSELF.

Witness—Mr. Magoon told me afterward about all the work he had done and was doing for me. Answering the respondent, witness credited Magoon with getting the money out of the bank for him.

Attorney-General—You generally pay lawyers what they ask you?

Mr. Magoon objected and after slight argument the question was withdrawn.

Justice Galbraith—Why did you pay Magoon \$4000 and Geo. A. Davis only \$2000?

AFRAID OF THEM.

Witness—I was afraid that if I refused they might bring a suit against me.

Chief Justice Frear—What did you offer Magoon \$2500 for, the services in the Roper case or all these others?

Witness—For all of his services. To Justice Perry—I first made the offer of \$2500. Don't know when Geo. A. Davis came into the case; my attorneys may have asked him to come in; no, I did not ask him to represent me.

MIGHT DO HIM UP.

To Magoon—in the event you were not satisfied with what I offered you, I did not know what you might do to me.

Q.—You were afraid that if you did not pay me \$4000 I would sue you?

A.—Yes.

Q.—Did I not tell you that if you were not perfectly satisfied you should say so?

A.—I had suggested to you \$2500 before that.

Q.—On my suggestion that you should pay me \$4000 you said you were perfectly satisfied, is not that so?

THOUGHT IT EXTORTIONATE.

A.—I felt within me that the sum of \$4000 was too much, though I didn't say so.

Q.—But you did say that you were perfectly satisfied?

A.—I merely said that as an excuse because I did not know what might not be done to me.

Q.—Did you not refuse to pay Mr. Davis the sum of \$2500?

A.—I didn't refuse because he had done services the same as you.

Q.—Did you not pay Davis all he asked?

DAVIS ALSO RAISED HIM.

A.—I offered Mr. Davis \$1500 for his services but he refused to accept \$1500. He wanted \$2500. Davis said if I did not pay \$2500 he would stop the payment of money out of the bank.

Q.—So you can refuse to pay money when you want to?

A.—Yes, I refused to pay him more than \$1500.

Q.—You stood on that refused for a long time?

GAVE IN THROUGH FEAR.

A.—I came away with Willie Davis and on the road I suggested to him that I was afraid and that I had better give Geo. Davis \$500 more.

Q.—What was the difference between my services at \$2500 and Davis's at \$1500?

HAD SIZED HIM UP.

A.—If I had offered you \$3000 you probably would not have accepted it, you would probably have wanted more. I told the Attorney-General I paid the money because I did not want any lawsuit. It would be better for the court to distribute costs because lawsuits are something I don't know anything about.

To Justice Perry—It was after the \$48,025 was paid over to me that I spoke to Magoon about his fee.

To Magoon—Witness remembered when he received the check before Judge De Bolt and told in tones too low to be heard across the room the names of those he remembered present. He did not stay in court long after receiving the check; did not talk much with Judge De Bolt. Put the money into the First National Bank; took Geo. A. Davis to the bank with me and gave him a check for \$2000; put the book in my pocket and went to your office and had a talk about your fee; thought \$2500 was fair.

QUESTIONED TOO FAR.

Q.—Didn't you think \$4000 was fair when I asked you?

A.—I had to say yes; yes, it took about four or five minutes to settle the whole thing.

This ended the testimony of Mr. Sumner, excepting that, as he retired, he was reminded by the Attorney-General to bring the receipt for the \$4000 with him today.

The Court continued the trial until 1:30 this afternoon.

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